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| APPLICATION NO.             | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|-----------------------------|-------------|------------------------|----------------------|------------------|
| 10/772,620                  | 02/05/2004  | Ronald Richard Rayburn | 26434-0007           | 5081             |
| 65885                       | 7590        | 03/18/2009             | EXAMINER             |                  |
| MCNEES WALLACE & NURICK LLC |             |                        | HARTMAN JR, RONALD D |                  |
| 100 PINE ST.                |             |                        |                      |                  |
| P.O. BOX 1166               |             |                        | ART UNIT             | PAPER NUMBER     |
| HARRISBURG, PA 17108-1166   |             |                        | 2121                 |                  |
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|                             |             |                        | 03/18/2009           | PAPER            |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/772,620             | RAYBURN ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | RONALD D. HARTMAN JR   | 2121                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 1/8/2009.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5, 7, 9 and 12-26 is/are pending in the application.  
 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5, 7, 9, 12-18 and 20-26 is/are rejected.  
 7) Claim(s) 19 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 13 and 20 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 13 fails to further limit claim 12. Claim recites HVAC equipment, and then claim 20 recites that the HVAC equipment is heating, ventilation or air conditioning equipment, this is redundant. HVAC equipment is by the very nature of the acronyms use, heating, ventilation, and air conditioning equipment, and therefore this claim does not further limit claim 12.

Claim 20 fails to further limit claim 18. Claim recites HVAC equipment, and then claim 20 recites that the HVAC equipment is heating, ventilation or air conditioning equipment, this is redundant. HVAC equipment is by the very nature of the acronyms use, heating, ventilation, and air conditioning equipment, and therefore this claim does not further limit claim 18.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites “from the at least one time of HVAC”. There is insufficient antecedent basis for this limitation in this claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 9, 12-14, 16-18 and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sue, U.S. Patent No. 7,310,344.

Claim 1 recites a method of remotely monitoring building equipment comprising providing at least one item of building HVAC equipment communicably linked to a router, the router being communicably linked to an instant messaging server; providing at least one remotely located interface, the at least one remotely located interface being communicably linked to the instant messaging server; gathering data from the at least one item of building HVAC equipment with the router; packetizing the gathered building equipment data into at least one data packet; encapsulating the at least one data packet into an instant message; and transmitting the encapsulated at least one data packet in the instant message from the router to the at least one remotely located interface through the instant messaging server.

These features are all anticipated, or rendered inherent to Sue which discloses a system that allows a cell phone or PALM user the ability to remotely monitor and control devices belonging to a home automation system through utilization of an instant messaging server (e.g. See Figure 1 and C3 L60-62).

Although not specifically mentioned, utilizing the process of encapsulation and un-encapsulation is a process believed to be obvious to the actual implementation of Sue since this represents a notoriously well known feature associated with Internet

based communications. See Wikipedia's definition of "Encapsulation" for support of this assertion.

As per claim 7, converting data is inherent to Sue.

As per claim 9, since encapsulation is believed to be obvious to the implementation of Sue, it logically follows that the encapsulated data would be un-encapsulated upon its delivery to the remotely located interface. This process appears to be anticipated by data being retrieved from an IP packet which is sent to the remote interface. Since Sue teaches IP based packets being transmitted to and from building equipment, via the utilization of an instant messaging server, it seems obvious that the data in the packets would need to be retrieved in order for Sue to function with any effectiveness whatsoever.

As per claims 12-13, Sue teaches gathering data from the HVAC equipment to be comprised of at least one of data representative of an alarm, a fault, operational status, a mode, a setting, operational parameters or historical parameters (e.g. See Figure 3 elements 304 and 305).

As per claim 14, Sue adequately discloses the process of setting a thermostat, per se (e.g. See C2 L12-21 and C3 L15-33).

As per claim 16, clearly Sue teaches utilizing an instant messaging server and a router to convey messages to and from a user located remotely from appliances of a home (e.g. See Figure 1 and C3 L60-62).

As per claim 17, the rejection of claim 1 is applied herein.

As per claims 18 and 20, the rejection of claims 1, 7 and 12-13 are applied herein.

As per claim 21, the rejection of claim 12 is applied herein.

As per claim 22, the rejection of claim 14 is applied herein.

As per claim 23, the rejection of claim 15 is applied herein.

As per claim 24, the rejection of claim 1 is applied herein.

As per claims 25 and 26, the rejection of claim is applied herein.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sue, as applied to claim 1 above, and further in view of Official Notice.

Claim 2 introduces a feature wherein the router may be identified by the instant message. A router is notoriously well known to have identification data associated with it so that messages on a network will be directed to the proper destination (in this case a router connected to an overall HVAC system) in a timely and efficient manner. Also, it is also notoriously well known to include destination identification data into a communications packet itself, especially an IP packet of data. Therefore, one way or the other, this feature is at the very least obvious to the implementation of Sue et al. and represents a feature notoriously well known in the overall art of network traffic management.

That being said, Official Notice is taken with respect to the features just mentioned, as their incorporation would be obvious to one of ordinary skill in the art at the time the invention was made for the purpose of making sure data packets arrive at their proper destination.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sue combined system (Sue in view of Official Notice), as applied to claim 2 above, and further in view of Matte, U.S. Patent Application Publication No. 2003/0233429.

Claims 3-5 are obvious to an application running on a portable remotely located computer, wherein the application allows a person to type in their private password, so as to allow a remotely located home automation system to recognize as to whether the person is allowed access to the system, and granting access if it is determined that the person is allowed to access the home automation system. These particular steps are not explicitly taught by Sue.

These features are taught by Matte et al (e.g. See [0025]).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sue's combined system with Matte et al. since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. It would have been obvious to include the features of Matte et al into Sue's combined system for the purpose of ensuring the security of the overall system.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sue, as applied to claim 1 above, and further in view of Official Notice.

As per claim 15, Sue does not explicitly teach polling building equipment at selected time intervals.

Official Notice is taken with respect to this feature. It would be obvious to include this feature so that the status of the equipment is known at more than one instant in time, thereby forming a more reliable system.

***Allowable Subject Matter***

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RONALD D. HARTMAN JR whose telephone number is (571)272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decay can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ronald D Hartman Jr./  
Primary Examiner, Art Unit 2121  
March 16, 2009

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